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12 Attorneys for Defendants
13 AMZONE LLC, HUGO MARTINEZ,
14 (erroneously sued as AUGO MARTINEZ),
and HOYTT ENTERPRISES, INC.

15
16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 PETER MENDOZA,

19 Plaintiff,

20 v.

21 AMZONE, LLC; HUGO MARTINEZ
22 (erroneously sued as AUGO
MARTINEZ); HOYTT
23 ENTERPRISES, INC.; and DOES 1-10,
Inclusive,

24 Defendants.
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Case No. C10-03258-EMC

Civil Rights

**CONSENT DECREE AND
[PROPOSED] ORDER AS TO
INJUNCTIVE RELIEF ONLY**

**ORDER RESETTING STATUS CONFERENCE
FROM 9/9/11 to 10/28/11**

1 1. Plaintiff PETER MENDOZA filed a Complaint in this action on July
2 26, 2010, to obtain recovery of damages for his discriminatory experiences, denial
3 of access, and denial of his civil rights, and to enforce provisions of the Americans
4 with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and California
5 civil rights laws against Defendants AMZONE, LLC; HUGO MARTINEZ
6 (erroneously sued as AUGO MARTINEZ); HOYTT ENTERPRISES, INC.
7 (together sometimes "Defendants"), relating to the condition of Defendants' public
8 accommodations as of January 29, 2010, and continuing. Plaintiff has alleged that
9 Defendants violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3, and
10 55 of the California Civil Code, and sections 19955 *et seq.* of the California Health
11 & Safety Code by failing to provide full and equal access to their facilities at 930
12 Seventh St., Novato, California.

13
14 2. Plaintiff and Defendants (together sometimes the "Parties") hereby
15 enter into this Consent Decree and Order for the purpose of resolving injunctive
16 relief aspects of this lawsuit without the need for protracted litigation. Issues of
17 damages and attorneys' fees, costs, and expenses will be the subject of further
18 negotiations and litigation if necessary.

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25 **JURISDICTION:**

26 3. The Parties to this Consent Decree and Order agree that the Court has
27 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
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1 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
2 and pursuant to supplemental jurisdiction for alleged violations of California
3 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
4 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.
5

6 4. In order to avoid the costs, expense, and uncertainty of protracted
7 litigation, the Parties to this Consent Decree and Order agree to entry of this
8 Consent Decree and Order to resolve all claims regarding injunctive relief raised in
9 the Complaint filed with this Court. Accordingly, the Parties agree to the entry of
10 this Order without trial or further adjudication of any issues of fact or law
11 concerning Plaintiff's claims for injunctive relief.
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13
14 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate
15 to the Court's entry of this Consent Decree and Order, which provide as follows:
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18 **SETTLEMENT OF INJUNCTIVE RELIEF:**

19 5. This Order shall be a full, complete, and final disposition and
20 settlement of Plaintiff's claims against Defendants for injunctive relief that have
21 arisen out of the subject Complaint.
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23 6. The Parties agree and stipulate that the corrective work will be
24 performed in compliance with the standards and specifications for disabled access
25 as set forth in the California Code of Regulations, Title 24-2, and Americans with
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1 Disabilities Act Accessibility Guidelines, unless other standards are specifically
2 agreed to in this Consent Decree and Order.

3 a) **Remedial Measures:** The corrective work agreed upon by the
4 Parties is set forth in **Attachment A**, attached and incorporated herewith.

5 Defendants agree to undertake all of the respective remedial work as set forth
6 therein.
7

8 b) **Timing of Injunctive Relief:** Defendants will submit plans
9 for all corrective work to the appropriate governmental agencies within 30 days of
10 the entry of this Consent Decree by the Court. Defendants will commence work
11 within 30 days of receiving approval from the appropriate agencies. Defendants
12 will complete all work within 90 days of commencement of work. In the event
13 that unforeseen difficulties prevent Defendants from completing any of the agreed-
14 upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in
15 writing within 15 days of discovering the delay. Defendants or their counsel will
16 notify Plaintiff's counsel when the corrective work is completed, and in any case
17 will provide a status report no later than 120 days from the entry of this Consent
18 Decree.
19

20 c) Defendants will notify Plaintiff in writing at the end of 120
21 days from the Parties' signing of this Consent Decree and Order as to the current
22 status of agreed-to injunctive relief, and every 90 days thereafter until all access is
23 provided. If Defendants fail to provide injunctive relief on the agreed upon
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1 timetable and/or fail to provide timely written status notification, and Plaintiff files
2 a motion with the Court to obtain compliance with these terms, Plaintiff reserves
3 the right to seek additional attorneys' fees for all compliance work necessitated by
4 Defendants' failure to keep this agreement.
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7 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND**
8 **COSTS:**
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10 7. The Parties have not reached any agreement regarding Plaintiff's
11 claims for damages, attorneys' fees, litigation expenses, and costs. These matters
12 will be the subject of future negotiation or litigation as necessary. The Parties
13 jointly stipulate and request that the Court not dismiss the case in its entirety as
14 these issues remain unresolved.
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18 **ENTIRE CONSENT DECREE AND ORDER:**

19 8. This Consent Decree and Order and **Attachment A** constitute the
20 entire agreement between the signing Parties on the matters of injunctive relief,
21 and no other statement, promise, or agreement, either written or oral, made by any
22 of the Parties or agents of any of the Parties that is not contained in this written
23 Consent Decree and Order, shall be enforceable regarding the matters of injunctive
24 relief described herein. This Consent Decree and Order applies to Plaintiff's claims
25 for injunctive relief only and does not resolve Plaintiff's claims for damages,
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1 attorneys' fees, litigation expenses, and costs, which shall be the subject of further
2 negotiation and/or litigation. The Parties stipulate that all Parties request that the
3 Court not dismiss the case in its entirety as issues of statutory damages, attorneys'
4 fees, litigation expenses, and costs are still before the Court.
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7 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
8 **SUCCESSORS IN INTEREST:**

9 9. This Consent Decree and Order shall be binding on Plaintiff,
10 Defendants, and any successors-in-interest. Defendants have a duty to so notify all
11 such successors-in-interest of the existence and terms of this Consent Decree and
12 Order during the period of the Court's jurisdiction of this Consent Decree and
13 Order.
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17 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
18 **TO INJUNCTIVE RELIEF ONLY:**

19 10. Each of the Parties to this Consent Decree and Order understands and
20 agrees that there is a risk and possibility that, subsequent to the execution of this
21 Consent Decree and Order, any or all of them will incur, suffer, or experience
22 some further loss or damage with respect to the lawsuit that is unknown or
23 unanticipated at the time this Consent Decree and Order is signed. Except for all
24 obligations required in this Consent Decree and Order, the Parties intend that this
25 Consent Decree and Order apply to all such further loss with respect to the lawsuit,
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1 except those caused by the Parties subsequent to the execution of this Consent
2 Decree and Order. Therefore, except for all obligations required in this Consent
3 Decree and Order, this Consent Decree and Order shall apply to and cover any and
4 all claims, demands, actions, and causes of action by the Parties to this Consent
5 Decree with respect to the lawsuit, whether the same are known, unknown, or
6 hereafter discovered or ascertained, and the provisions of Section 1542 of the
7 California Civil Code are hereby expressly waived. Section 1542 provides as
8 follows:
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11 **A GENERAL RELEASE DOES NOT EXTEND TO**
12 **CLAIMS WHICH THE CREDITOR DOES NOT**
13 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
14 **FAVOR AT THE TIME OF EXECUTING THE**
15 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
16 **MUST HAVE MATERIALLY AFFECTED HIS**
17 **SETTLEMENT WITH THE DEBTOR.**

18 This waiver applies to the injunctive relief aspects of this action only and does not
19 include resolution of Plaintiff's claims for damages, attorney fees', litigation
20 expenses, and costs.

21 11. Except for all obligations required in this Consent Decree and Order –
22 and exclusive of the referenced continuing claims for damages, statutory attorneys'
23 fees, litigation expenses, and costs – each of the Parties to this Consent Decree and
24 Order, on behalf of each, their respective agents, representatives, predecessors,
25 successors, heirs, partners, and assigns, releases and forever discharges each other
26 Party and all officers, directors, shareholders, subsidiaries, joint venturers,
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1 stockholders, partners, parent companies, employees, agents, attorneys, insurance
2 carriers, heirs, predecessors, and representatives of each other Party, from all
3 claims, demands, actions, and causes of action of whatever kind or nature,
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5 presently known or unknown, arising out of or in any way connected with the
6 lawsuit.

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9 **TERM OF THE CONSENT DECREE AND ORDER:**

10 12. This Consent Decree and Order shall be in full force and effect for a
11 period of eighteen (18) months after the date of entry of this Consent Decree and
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13 Order by the Court, or until the injunctive relief contemplated by this Order is
14 completed, whichever occurs later. The Court shall retain jurisdiction of this
15 action to enforce provisions of this Consent Decree and Order for eighteen (18)
16 months after the date of entry of this Consent Decree and Order by the Court, or
17 until the injunctive relief contemplated by this Order is completed, whichever
18 occurs later.
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22 **SEVERABILITY:**

23 13. If any term of this Consent Decree and Order is determined by any
24 court to be unenforceable, the other terms of this Consent Decree and Order shall
25 nonetheless remain in full force and effect.
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SIGNATORIES BIND PARTIES:

14. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

END OF PAGE.

**SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT
THE END OF THE DOCUMENT.**

Mendoza v. Amzone, LLC, et al.

Case No. C10-03258-EMC

United States District Court, Northern District of California

ATTACHMENT A TO CONSENT DECREE AND ORDER

Plaintiff Peter Mendoza ("Plaintiff") and defendants Amzone, LLC; Hugo Martinez, and Hoytt Enterprises, Inc. (together the "Defendants") stipulate that Defendants will perform the following corrective work in compliance with the standards and specifications for disabled access as set forth in the 2007 California Code of Regulations, Title 24-2 and 1992 Americans With Disabilities Act Accessibility Guidelines, unless other standards are specifically agreed to herein.

- I. Accessible Route of Travel: Install detectable warnings at both curb ramps, which lead into the walkway that crosses the "drive-thru" lane. The material should cover the full width of each ramp and extend a minimum of 36" up from the base of the ramps.
- II. Parking:
 - A. Install the required parking space signage that reserves the space for persons with disabilities on a post or a wall with the bottom edge 80" above the ground.
 - B. Fill in required enforcement information regarding specific information about reclaiming towed vehicles.
 - C. Post signage that warns of minimum \$250 fine for unauthorized parking in the accessible parking space.
- III. North and East Entrance:

- A. Rebuild the area between the door and the curb to ensure maximum 2% slope. Walkways that lead up to the new landing from each side may slope a maximum of 5%.
- B. Adjust and maintain the door closers or replace and maintain them so that the force needed to open the doors is no more than 5 lbs.
- C. Adjust and maintain the door closers or replace and maintain them so that door closing speed is no more than 3 seconds from an open position of 70 degrees to a point 3 inches from the latch.

IV. Men's Restroom:

- A. Replace the round knob with lever hardware or remove the latching hardware all together.
- B. Adjust and maintain the door closers or replace and maintain them so that the force needed to open the doors is no more than 5 lbs.
- C. Adjust and maintain the door closers or replace and maintain them so that door closing speed is no more than 3 seconds from an open position of 70 degrees to a point 3 inches from the latch.
- D. Either remove the latch or the closer to eliminate the requirement for 12" of strike edge clearance on the push-side of the door.
- E. Install loop handles on both sides of the stall door.
- F. Repair or replace the closing mechanism on the stall door so that it is self-closing.
- G. Install accessible latching hardware for stall door.

- H. Move toilet laterally a distance of 1-1/2" so that the fixture is centered 18" from the adjacent wall.
 - I. Reposition the toilet paper dispenser so that it is a maximum of 36" from the rear wall to the leading edge of the paper outlet and a minimum of 19" above the floor to the paper outlet.
 - J. Where towel, sanitary napkins, waste receptacles, and other similar dispensing and disposal fixtures are provided, at least one of each type shall be located with all operable parts, including coin slots, within 40" above the finished floor.
- V. Women's Restroom:
- a. Replace the round knob with lever hardware or remove the latching hardware all together.
 - b. Either remove the latch or the closer to eliminate the requirement for 12" of strike edge clearance on the push-side of the door.
 - c. Change the counter sink to a wall-hung fixture and modify the door to the toilet compartment as shown in Attachment 1 (Page 2) "Women's Restroom Recommendations" of Jonathan Adler's 11/15/2010 report, a copy of which is included with this Attachment A to the Consent Decree and Order.
 - d. Reverse the swing of the stall door and move the opening approximately 9" laterally to ensure proper diagonal orientation of the toilet and a maximum stile width of 4". See also Attachment 1 (Page 2) "Women's Restroom Recommendations" of Jonathan Adler's 11/15/2010 report.

- e. Relocate sanitary seat cover dispenser to a sidewall of the toilet compartment or to the inside face of the door into the stall.
- f. Reposition the toilet paper dispenser so that toilet paper is reachable at a height of no lower than 19" above the finished floor and the dispenser is a maximum of 36" from the back wall to the leading edge of the toilet paper dispenser.
- g. Install loop handle on the interior side of the stall door.
- h. Lower the hand dryer at least 3-1/2" so that the operable part of the dryer is no more than 40" above the finished floor.
- i. Lower the coat hook to 48" above the finished floor.

1 Dated: 7/20, 2011

PLAINTIFF PETER MENDOZA

2
3
4 PETER MENDOZA

5
6 Dated: _____, 2011

DEFENDANT AMZONE LLC

7
8 By: 

9 Print name: SALMAN AZHAR

10 Title: LLC Manager

11 Dated: 7/20, 2011

DEFENDANT HOYTT ENTERPRISES, INC.

12
13 By: 

14 Print name: Gregory C. McCallum

15 Title: Controller

16
17 Dated: _____, 2011

DEFENDANT HUGO MARTINEZ

18
19 HUGO MARTINEZ

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21 APPROVED AS TO FORM:

22
23 DATED: 7/20, 2011

LAW OFFICES OF PAUL L. REIN

24
25 By: 

Catherine M. Cabalo

26
27 Attorneys for Plaintiff
PETER MENDOZA

1
2 DATED: July 20, 2011

VALERIAN PATTERSON & STRATMAN
LLP

3
4 By: 
5 David E. Hunter, III

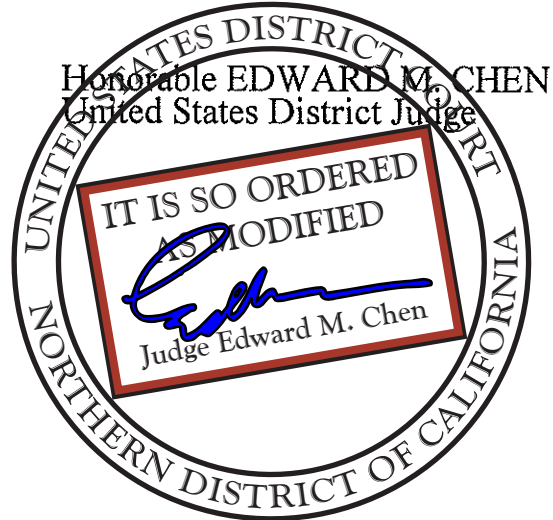
6 Attorneys for Defendants
7 AMZONE LLC, HUGO MARTINEZ,
(erroneously sued as AUGO MARTINEZ),
and HOYTT ENTERPRISES, INC.

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

The Status Conference set for 9/9/11 at 10:30 a.m. is reset for 10/28/11 at 10:30 a.m. An updated joint Status Report shall be filed by 10/21/11. The 10/28/11 Status will be vacated once a stipulation for dismissal is filed.

Dated: 8/3, 2011



FILER'S ATTESTATION

Pursuant to General Order 45, section X(B), I hereby attest that on
July 20, 2011, I, Catherine M. Cabalo, received the concurrence of David
E. Hunter, III in the filing of this document.



Catherine M. Cabalo